

Exhibit 3

REDACTED

1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,
Debtor.

Adv.Pro.No.
08-01789 (BRL)

-----x

IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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CONFIDENTIAL

VIDEOTAPED DEPOSITION of NOREEN HARRINGTON, as
taken by and before NANCY C. BENDISH, Certified
Court Reporter, RMR, CRR and Notary Public of the
States of New York and New Jersey, at the offices of
Baker Hostetler, 45 Rockefeller Plaza, New York, New
York on Tuesday, October 1, 2013, commencing at
10:10 a.m.

A P P E A R A N C E S:

BAKER & HOSTETLER, LLP
45 Rockefeller Plaza
New York, New York 10111
BY: REGINA L. GRIFFIN, ESQ.
STACEY A. BELL, ESQ.
NEXUS U. SEA, ESQ.
For Irving H. Picard, Trustee
for the Liquidation of BLMIS

DECHERT, LLP
1095 Avenue of the Americas
New York, New York 10036-6797
BY: NEIL A. STEINER, ESQ.
MARIEL BRONEN, ESQ.
For Gabriel Capital Corp.
and J. Ezra Merkin

REED SMITH LLP
599 Lexington Avenue
New York, New York 10022
BY: JOHN L. SCOTT, ESQ.
For Gabriel, LP and Ariel Fund, LP

NORTON ROSE FULBRIGHT
666 Fifth Avenue
New York, New York 10103
BY: DAVID I. BARRACK, ESQ.
For the Receiver for Ascot Partners

DLA PIPER US, LLP
1251 Avenue of the Americas
New York, New York 10020
BY: KEARA M. GORDON, ESQ.
For the Witness, Noreen Harrington

ALSO PRESENT:

JUAN TORRES, Video Technician

119

01:59:55 1 A. [REDACTED].

01:59:57 2 Q. Nobody else?

01:59:58 3 A. No, just the three of us.

02:00:00 4 Q. And did you tell Mr. Merkin why you
02:00:09 5 had requested the meeting?

02:00:14 6 A. We told Mr. Merkin that we had a new
02:00:16 7 fund that we were going to be launching, and we had
02:00:20 8 to do a review of -- a review of his funds. And I
02:00:28 9 think [REDACTED] also told him that since I had never sat
02:00:32 10 down with him, it was important that I had a better
02:00:35 11 understanding of his management of the funds.

02:00:45 12 Q. Did you do any preparation for your
02:00:48 13 meeting with Mr. Merkin?

02:00:49 14 A. I did.

02:00:50 15 Q. And what did you do to prepare for
02:00:52 16 your meeting with Mr. Merkin?

02:00:53 17 A. I looked at all the documentation
02:00:55 18 that we had on file. That would include attribution
02:00:59 19 letters, subscription documents. It would include
02:01:07 20 pitchbook, the returns that he had gotten to date,
02:01:12 21 his CV is in there, any notes that [REDACTED] had from
02:01:21 22 previous meetings would have all been in the file
02:01:24 23 that I would have looked at. And I had looked at
02:01:26 24 that file prior to this June meeting, anyway.

02:01:34 25 Q. And how did you get information about

130

02:15:22 1 about your process?

02:15:26 2 A. It was a fairly rote conversation I
02:15:31 3 had with every single money manager, similar to them
02:15:35 4 getting to know -- us getting to know their funds.
02:15:38 5 It was imperative, we felt, that they would know who
02:15:42 6 we were, as well.

02:15:44 7 And so what I said to every manager,
02:15:46 8 including Ezra Merkin, was that we have a process
02:15:50 9 that we deploy. And this is very similar to what I
02:15:53 10 said our due diligence process was this morning,
02:15:56 11 which is we have multiple meetings with managers, we
02:16:01 12 sit with the junior people, we look at trade
02:16:05 13 tickets, we -- we ask a whole bunch of questions
02:16:09 14 regarding the management of the money, the
02:16:13 15 liquidity, the decision-making, all the particulars
02:16:18 16 I ran through earlier.

02:16:19 17 And then we would circle back to Ezra
02:16:22 18 Merkin when our process was complete so that he
02:16:25 19 could answer any of our remaining questions and --
02:16:36 20 and then there would be an investment meeting at
02:16:39 21 [REDACTED] and a decision would be taken as to
02:16:43 22 whether we were going to invest in the fund and how
02:16:46 23 much.

02:16:49 24 Q. And do you have a general
02:16:50 25 recollection of what Mr. Merkin's response was when

131

02:16:52 1 you described your process to him?

02:16:55 2 MR. STEINER: Objection to form.

02:16:55 3 Q. You can answer.

02:16:58 4 A. On this I have a specific
02:17:00 5 recollection. Mr. Merkin told me that this was a
02:17:07 6 privilege. And first, before he told me it was a
02:17:13 7 privilege, he clearly stated that I didn't get it.
02:17:17 8 And he stated that sentence again adding a "really,"
02:17:26 9 you really don't get it, do you? And after saying
02:17:28 10 that twice, he said that this was a privilege, you
02:17:31 11 don't get to ask questions. And to that I
02:17:36 12 responded: You don't get it. I have an -- I have
02:17:39 13 an obligation to my investors to ask these
02:17:43 14 questions. And might I add, Mr. Merkin, so do you.
02:17:47 15 Shortly after that, the meeting ended.

02:17:55 16 Q. Do you recall whether or not you
02:17:58 17 discussed conducting or meeting with Mr. Madoff with
02:18:02 18 Mr. Merkin?

02:18:10 19 A. Could you ask the question again?

02:18:12 20 Q. Sure.

02:18:13 21 Do you recall whether or not you
02:18:15 22 discussed with Mr. Merkin the possibility about
02:18:18 23 meeting with Mr. Madoff?

02:18:21 24 MR. STEINER: Objection to form.

02:18:26 25 A. My recollection might be that -- I

132

02:18:31 1 wouldn't say it the way you just asked it. What I
02:18:35 2 would say is that my due diligence had to go through
02:18:39 3 him to Madoff or anyone else that he was giving
02:18:43 4 money to.

02:18:43 5 Q. Did you say that to Mr. Merkin at
02:18:46 6 that meeting?

02:18:47 7 MR. STEINER: Objection to form.

02:18:50 8 A. I -- my recollection is I did, and
02:18:53 9 that actually would have been prior to the comment
02:18:55 10 about the privilege.

02:19:25 11 Q. Was it a significant fact to you that
02:19:29 12 Merkin's funds gave money to Madoff to manage?

02:19:33 13 MR. STEINER: Objection to form.

02:19:39 14 A. Would you mind just -- you asked if
02:19:41 15 it was a significant fact?

02:19:43 16 Q. Was it important to you, was it an
02:19:45 17 important fact to learn that Merkin was giving his
02:19:51 18 funds' money to Madoff to manage?

02:19:55 19 MR. STEINER: Objection to form.

02:19:57 20 A. In my opinion, it's a show stopper.
02:20:01 21 And I would just say that without doing -- it's
02:20:05 22 another layer of lack of transparency, and we tell
02:20:09 23 our investors that we have transparency. And as a
02:20:13 24 fiduciary, I -- it was imperative that we understand
02:20:17 25 the investments and the decision-making in a fund

133

02:20:23 1 and subsequent funds if they give it to somebody
02:20:26 2 else.

02:20:40 3 Q. Do you recall whether or not you
02:20:41 4 discussed Merkin's infrastructure at his funds?

02:20:55 5 A. We were there, so with our own eyes
02:20:59 6 we could see his operation and -- but we did explain
02:21:06 7 to him that part of our due diligence process would
02:21:08 8 be looking at the operations, the infrastructure,
02:21:16 9 those kind of -- besides the investment side, we
02:21:20 10 look at that side as well.

02:21:22 11 Q. And why would you look at the
02:21:24 12 infrastructure as part of your due diligence
02:21:29 13 process?

02:21:30 14 A. You know, we're looking to see how
02:21:32 15 robust it is. He obviously has a strategy that
02:21:35 16 would deploy computers, technology. We look at the
02:21:42 17 personnel closely to see their pedigree. We look
02:21:47 18 at -- you know, we're -- we're going to look at --
02:21:58 19 we look at every aspect of the business basically.
02:22:00 20 We look at the business side of it, we look at the
02:22:03 21 operational side of it and we look at the trading or
02:22:07 22 money management side of it. So it's -- it's part
02:22:09 23 of our process, all of it.

02:22:11 24 Q. And what did you observe about
02:22:13 25 Merkin's infrastructure?

213

04:44:49 1 the concerns that you raised in the investment
04:44:52 2 committee meeting, you did not raise to Mr. Merkin,
04:44:57 3 correct?

04:44:57 4 MS. GRIFFIN: Objection.

04:44:58 5 MS. GORDON: Objection.

04:45:01 6 A. Would you ask it again?

04:45:02 7 Q. The concerns that you've talked about
04:45:04 8 that you raised in the investment committee meeting,
04:45:08 9 right, which developed after your meeting with
04:45:12 10 Mr. Merkin and prior to the investment committee
04:45:15 11 meeting, you, Noreen Harrington, never raised any of
04:45:20 12 those concerns to Mr. Merkin, correct?

04:45:23 13 A. Wrong.

04:45:23 14 MS. GRIFFIN: Objection.

04:45:23 15 MS. GORDON: Objection.

04:45:25 16 A. That's actually wrong.

04:45:25 17 Q. Well, when after the meeting with
04:45:28 18 Mr. Merkin did you ever speak to him again?

04:45:31 19 A. I raised the issues of transparency
04:45:35 20 in the meeting, okay. I raised the issues of giving
04:45:41 21 money to a third party in the meeting, okay. I told
04:45:47 22 him for us to do this investment we had to do our
04:45:50 23 due diligence, and I laid out a process, okay. His
04:45:54 24 response to me is this is a privilege, I don't get
04:45:57 25 to ask questions.

214

04:46:00 1 You can almost forget all the work
04:46:02 2 that we did, you can almost forget it, okay, because
04:46:05 3 we -- in my opinion as a fiduciary, we had
04:46:14 4 non-transparency, we had a feeder and we had a
04:46:19 5 process which was truncated at the end of one
04:46:22 6 meeting.

04:46:24 7 So, therefore, I probably didn't even
04:46:27 8 need to do any work. I did work to try and
04:46:30 9 substantiate the accusation in the end that I
04:46:39 10 levered.

04:46:41 11 Q. The accusations that you leveled you
04:46:45 12 did not raise with Mr. Merkin, correct?

04:46:50 13 MS. GORDON: Object to form.

04:46:51 14 MS. GRIFFIN: Objection.

04:46:54 15 A. I did not -- I did not tell
04:46:56 16 Mr. Merkin in the meeting that I suspected
04:46:59 17 front-running, and I did not tell Mr. Merkin in the
04:47:03 18 meeting that I believed the returns were fiction.

04:47:09 19 Q. Now, if we could -- I just want to
04:47:16 20 ask one or two other topics.

04:47:26 21 You -- did [REDACTED] ever
04:47:29 22 invest with Canary?

04:47:30 23 A. No.

04:47:31 24 Q. Did you consider an investment on
04:47:34 25 behalf of [REDACTED] with Canary?